

No. 14350

United States
Court of Appeals
For the Ninth Circuit.

DORIS BERNICE SHACKELFORD, ALLAN
RAY SHACKELFORD and LARRY WIL-
LIAM SHACKELFORD, Minors, by Doris
Bernice Shackelford, Their Guardian ad Litem,
Appellants,

vs.

MISSION TAXICAB COMPANY, INC., a Cor-
poration; ROBERT GOODRICK and BU-
FORD H. SHIPMAN,
Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court, for the Northern District of California

No. 30732

DORIS BERNICE SHACKELFORD and ALLAN RAY SHACKELFORD and LARRY WILLIAM SHACKELFORD, Minors, by DORIS BERNICE SHACKELFORD, Their Guardian Ad Litem,

Plaintiffs,

vs.

MISSION TAXI COMPANY, a Corporation, ROBERT GOODRICK, and BUFORD H. SHIPMAN,

Defendants.

COMPLAINT

Plaintiffs complain of defendants and for cause of action allege:

I.

That plaintiff Allan Ray Shackelford is a minor of the age of two years and that by an order of the above-entitled court duly made and entered plaintiff Doris Bernice Shackelford has been appointed guardian ad litem of said minor to institute and prosecute this action.

II.

That plaintiff Larry William Shackelford is a minor of the age of one year and that by an order of the above-entitled court duly made and entered

plaintiff Doris Bernice Shackelford has been appointed guardian ad litem of said minor to institute and prosecute this action.

III.

That at all times herein mentioned plaintiff Doris Bernice Shackelford and William Thomas Shackelford, deceased, were wife and husband and that said plaintiff Doris Bernice Shackelford is the surviving widow of said William Thomas Shackelford, deceased, and that Allan Ray Shackelford and Larry William Shackelford are the sole surviving children of said plaintiff Doris Bernice Shackelford and William Thomas Shackelford, deceased.

IV.

That at all times hereinafter mentioned the defendant Mission Taxi Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of San Jose, County of Santa Clara, State of California; that at all times herein mentioned defendant Mission Taxi Company carried on the business of operating and maintaining a line of cabs and cab service for the transportation of passengers for hire in and around and near the said City of San Jose, County of Santa Clara, State of California, and that William Thomas Shackelford, deceased, received the injuries causing his death as hereinafter set out in a certain taxicab which the defendant Mission Taxi Company was then operating in

and as a part of its said system of cab service as a common carrier of passengers for hire.

V.

Plaintiffs are informed and believe and therefore allege that at all times herein mentioned defendant Robert Goodrick was the agent and employee of defendant Mission Taxi Company; that said defendant Goodrick was the operator of one of defendant Mission Taxi Company's taxicabs, and that at all times herein mentioned defendant Goodrick was acting within the scope of his employment.

VI.

That at all times herein mentioned defendant Buford H. Shipman was the owner of a certain 1930 Studebaker Sedan automobile bearing 1950 Washington State License Number A 155714; plaintiffs are informed and believe and therefore allege that at all times herein mentioned said Studebaker automobile was driven and operated by one Dallas Cutler with the permission and consent of defendant Buford H. Shipman.

VII.

Plaintiffs Doris Bernice Shackelford, Allan Ray Shackelford and Larry William Shackelford are citizens of the State of Minnesota; that defendant Mission Taxi Company is a corporation incorporated under the laws of the State of California; that defendant Robert Goodrick is a citizen of the State of Ohio; that defendant Buford H. Shipman is a citizen of the State of Washington. The matter in controversy exceeds, exclusive of interest and

costs, the sum of Three Thousand (\$3,000.00) Dollars.

VIII.

That at all times herein mentioned U. S. Highway 101 was a public highway running in a general northerly and southerly direction through the County of Santa Clara, State of California.

IX.

Plaintiffs are informed and believe and therefore allege that at all times herein mentioned that certain Studebaker Sedan automobile owned by defendant Buford H. Shipman was being operated and driven by one Dallas Cutler with the permission and consent of defendant Buford H. Shipman in a generally southerly direction along and upon U. S. Highway 101 in the County of Santa Clara, State of California, at a point about two miles south of U. S. Naval Air Station, Moffett Field.

X.

Plaintiffs are informed and believe and therefore allege that on the morning of July 30, 1950, in or around San Jose, California, William Thomas Shackelford, deceased, entered a certain taxicab owned and operated by defendant Mission Taxi Company and driven and operated by defendant Robert Goodrick; that at said time and place William Thomas Shackelford, deceased, was received by defendants Robert Goodrick and Mission Taxi Company as a passenger of said taxicab for the journey which William Thomas Shackelford, deceased, intended to make.

XI.

Plaintiffs are informed and believe and therefore allege that on the morning of July 30, 1950, defendants Robert Goodrick and Mission Taxi Company transported William Thomas Shackelford, deceased, as a passenger of the taxicab of defendant Mission Taxi Company in a generally northerly direction along and upon U. S. Highway 101 at a point in the County of Santa Clara about two miles south of the United States Naval Air Station at Moffett Field; that while so carrying William Thomas Shackelford, deceased, in the said cab as a passenger, the defendants Robert Goodrick and Mission Taxi Company did so negligently, carelessly and recklessly operate and manage the said taxicab that said taxicab ran into and collided with that certain Studebaker Sedan automobile owned by defendant Buford H. Shipman which was being then operated and driven by one Dallas Cutler in a generally southerly direction along and upon U. S. Highway 101.

XII.

Plaintiffs are informed and believe and therefore allege that as a direct and proximate result of the carelessness and negligence of defendants Mission Taxi Company and Robert Goodrick, as hereinabove set forth, William Thomas Shackelford, deceased, sustained the following injuries, among others:

Skull fracture, multiple lacerations of the liver, comminuted fractures of his legs, which said injuries resulted in his death on August 3, 1950.

XIII.

Plaintiffs are informed and believe and therefore allege that at the time of said injuries which resulted in the death of William Thomas Shackelford, as aforesaid, the deceased was in good health and had a yearly income of approximately Five Thousand (\$5,000.00) Dollars; that William Thomas Shackelford, deceased, made financial contributions to and provided the sole support of plaintiffs; that plaintiffs were dependent upon said deceased for financial support, care and maintenance, and that as a result of the negligence and carelessness of defendants Mission Taxi Company and Robert Goodrick, as herein alleged, which caused the death of William Thomas Shackelford, deceased, the plaintiffs have been deprived of the financial support, care and maintenance of said William Thomas Shackelford, deceased, all to their general damage in the sum of One Hundred Twenty Thousand Dollars (\$120,000.00).

As and for a Second Separate and Distinct Cause of Action, Plaintiffs Allege:

I.

Plaintiffs repeat and reallege as a part of this cause of action each and all of the allegations contained in Paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X of the first cause of action with like effect as if herein fully alleged and incorporates herein all the facts therein set forth.

II.

Plaintiffs are informed and believe and therefore

allege that on the morning of July 30, 1950, William Thomas Shackelford, deceased, was being transported as a passenger for hire in a taxicab owned by defendant Mission Taxi Company and operated by defendants Mission Taxi Company and Robert Goodrick in a generally northerly direction upon United States Highway 101 at a point on said highway about two miles south of the United States Naval Air Station, Moffett Field.

III.

Plaintiffs are informed and believe and therefore allege that at said time and place, Dallas Cutler was operating that certain Studebaker automobile owned by defendant Buford H. Shipman in a generally southerly direction along and upon said U. S. Highway 101; that at said time and place Dallas Cutler did so carelessly, negligently and recklessly operate, manage and control the said Studebaker Sedan automobile that the said Studebaker Sedan automobile was caused to run into and collide with that certain taxicab in which William Thomas Shackelford, deceased, was riding as a passenger for hire.

IV.

Plaintiffs are informed and believe and therefore allege as a direct and proximate result of the carelessness and negligence of said Dallas Cutler, as hereinabove set forth, William Thomas Shackelford, deceased, sustained the following injuries, among others: Skull fracture, multiple lacerations of the liver, comminuted fractures of his legs, which injuries resulted in his death on August 3, 1950.

V.

Plaintiffs are informed and believe and therefore allege that at the time of said injuries which resulted in the death of William Thomas Shackelford, as aforesaid, the deceased was in good health and had a yearly income of approximately Five Thousand (\$5,000.00) Dollars; that William Thomas Shackelford, deceased, made financial contributions to and provided the sole support of plaintiffs; that plaintiffs were dependent upon said deceased for financial support, care and maintenance, and that as a result of the negligence and carelessness of Dallas Cutler, as herein alleged, which caused the death of William Thomas Shackelford, deceased, the Plaintiffs have been deprived of the financial support, care and maintenance of said William Thomas Shackelford, deceased, all to their general damage in the sum of One Hundred Twenty Thousand (\$120,000.00) Dollars.

Wherefore, plaintiffs pray judgment against defendants in the sum of One Hundred Twenty Thousand Dollars (\$120,000.00), for their costs of suit, and for such other and further relief as the court may deem proper in the premises.

/s/ HAROLD H. FULKERSON,
ROCKWELL & FULKERSON,
Attorneys for Plaintiffs.

Duly verified.

[Endorsed]: Filed July 24, 1951.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS MISSION TAXI-
CAB COMPANY, INC., a Corporation, and
ROBERT GOODRICK

Come now the defendants Mission Taxicab Company, Inc., a corporation (sued herein as Mission Taxi Company, a corporation), and Robert Goodrick, and appearing for themselves alone and not for any other person, firm, or corporation, for their Answer to the Complaint on file:

As to the First Cause of Action

I.

These answering defendants admit the allegations of Paragraphs I-X, inclusive, of said First Cause of Action.

II.

Answering the allegations of Paragraph XI from the commencement thereof to and including the word "Field" in line 19, page 4, of said complaint, said allegations are admitted; as to the remaining allegations of Paragraph XI these answering defendants deny generally and specifically, each and every, all and singular, said allegations.

III.

Answering the allegations of Paragraph XII, these answering defendants deny that as a direct or proximate or any result of any carelessness or negligence or recklessness of these answering defendants, or of either of them, said William Thomas

Shackelford sustained the injuries alleged or any injuries resulting in his death, whether as alleged in Paragraph XII, or otherwise.

IV.

Answering the allegations of Paragraph XIII, these answering defendants, while at all times denying carelessness or negligence or recklessness, allege that they are without sufficient knowledge, information or belief to enable them to answer any of the allegations of said paragraph, and basing their denial upon that ground, deny generally and specifically, each and every, all and singular, said allegations, and specially deny that plaintiffs, or any of them, have been or will be damaged in the sum of \$120,000.00, or in any sum or amount whatsoever, whether as alleged in Paragraph XIII, or otherwise.

V.

These answering defendants deny that by reason of any act or acts, fault, carelessness, recklessness or negligence upon their part or upon the part of either of them said William Thomas Shackelford sustained injuries of any kind or character, whether fatal or otherwise, or that plaintiffs, or either of them, sustained damages in any sum or amount whatsoever.

As to the Second Cause of Action

I.

These answering defendants are not required to answer the Second Cause of Action.

Wherefore, these answering defendants pray that plaintiffs take nothing by their complaint on file, and that said defendants have judgment for their costs of suit herein incurred and for such other and further relief as to the Court may seem proper.

Dated: August 13th, 1951.

BRONSON, BRONSON &
McKINNON,

By /s/ GEORGE K. HARTWICK,
Attorneys for Defendants Mission Taxicab Com-
pany, Inc., a Corporation, and Robert Good-
rick.

[Endorsed]: Filed August 14, 1951.

[Title of District Court and Cause.]

DEPOSITION OF EARL BRANTLEY

a witness for the plaintiff, taken by agreement of Counsel before John A. Michaelis, Notary Public in and for the Canal Zone, on the 11th day of July, 1953, at 2:30 p.m. at Balboa, Canal Zone. Present: Arosemena & Benedetti (Rodrigo Arosemena), for plaintiff, and Van Sieten, Ramirez & De Castro (Charles L. Ramirez), for defendants. It was stipulated that all objections to the questions propounded are not to be decided until, when and if the testimony taken on this deposition is presented.

The witness, Earl Brantley, was duly sworn by

(Deposition of Earl Brantley.)

John A. Michaelis, Notary Public, and testified as follows:

1. What is your name?
Earl Brantley.
2. Where do you live?
At Coco Solito, Canal Zone.
3. What is your occupation?
Aviation radioman in the U. S. Navy.
4. Where are you presently stationed?
At Coco Solo, Canal Zone.
5. Were you in the Navy on July 29 and July 30, 1950?
Yes.
6. Where were you attached at that time?
Naval air station at Moffett Field, California.
7. In July, 1950, were you acquainted with a person by the name of William Thomas Shackelford?
Yes.
8. Where did you know Mr. Shackelford?
I was stationed with him for about a year in the Navy.
9. What was his occupation?
He was a navigation radioman.
10. What was his rating?
Aviation radioman, first class.
11. Where was he stationed on July 29 and 30, 1950?

(Deposition of Earl Brantley.)

At the Naval Air Station, Moffett Field,
California.

12. Now, directing your attention to the events that occurred in the evening of July 29 and the morning of July 30, 1950, did you leave the Naval Air Station at Moffett Field in the afternoon or evening of July 29, 1950?

Evening.

13. At what time did you leave?

Early evening.

14. Did anyone accompany you?

Yes.

15. Who accompanied you?

There were seven radiomen, including Shackelford.

16. Did William Shackelford accompany you?

Yes.

17. Where did you go?

To San Jose, California.

18. About what time did you arrive at San Jose?

About 4 o'clock.

19. What did you do while in San Jose?

We looked the town over.

20. How long did you remain in San Jose?

Including the time that took to have a ride around town, it was about 2 o'clock in the morning.

(Deposition of Earl Brantley.)

21. What did you do then?

We went around to hitch-hike to Moffett Field.

22. Who was with you when you commenced your attempt to hitch-hike back to your station at Moffett Field?

Shackelford.

23. What time did you commence trying to hitch-hike back to Moffett Field?

About midnight.

24. How long did you continue trying to hitch-hike back to Moffett Field?

About two hours.

25. What did you do then?

Stopped a taxi.

26. Do you recall what kind of a taxicab you hailed?

A yellow taxicab.

27. Do you recall where it was that you hailed the cab?

Someplace around the main part of the City, don't know exactly.

28. Will you give us your best recollection of where it was that you hailed the cab?

About six or eight blocks from the main road.

29. What seat in the taxicab did you and William Shackelford occupy?

(Deposition of Earl Brantley.)

I, left, and he occupied the right, in the back part of the car.

30. What happened after you and William Shackelford got into the cab?

The cab driver drove faster speed.

31. Are you able to drive an automobile?

Yes.

32. Do you have a driver's license?

Yes.

33. From what State is your license issued?

Have a license from the State of Virginia.

34. How long have you been driving automobiles?

About thirteen years.

35. Will you describe the manner in which the taxicab was driven after you and William Shackelford engaged it to take you to Moffett Field?

He was driving about 65 miles, the lowest.

36. Do you recall how effective were the lights on the taxicab?

No, I don't.

37. What is your recollection of the distance illuminated by the lights on the taxicab?

I wouldn't know.

38. Did the taxicab stop at any time other than for traffic lights after you and Mr. Shackelford had engaged it?

(Deposition of Earl Brantley.)

Yes.

39. For what did it stop?

He stopped at a fight that was out in front of a bar in the driveway.

40. How did it happen that the cab stopped at the scene of the fight?

He saw the fight and put in, we told him not but he did.

41. After leaving the scene of the fight, did anything occur to prevent the taxicab from taking you to your station at Moffett Field?

Yes.

42. What happened?

We had a collision with another automobile.

43. What is your recollection of the amount of traffic on the highway travelled by the taxicab on the way from San Jose to the point of the accident?

The traffic was rather heavy.

44. Was the traffic heavy or light?

Heavy traffic.

45. Were other cars frequent, occasional or infrequent?

Frequent.

46. Can you give us any other information to indicate the extent of the traffic on the road prior to the accident?

It is a well-travelled highway and there is a lot of traffic on it.

(Deposition of Earl Brantley.)

47. Now, directing your attention to the manner in which the taxicab was being driven immediately prior to the accident, do you know at what speed the taxi was being driven?

He was driving fast; never falled under 65.

48. How do you know?

I was looking at the speedometer.

49. During the course of the trip from the time you initially engaged the taxicab until the time of the accident, was anything said by anyone in the cab concerning the speed of the cab?

Yes.

50. What was said?

We told him that we were in no hurry, about two or three times.

51. Who said it?

I said it once and Shackelford a couple of times.

52. When was it said?

First time before we stopped at the fight.

53. Was anything else said by anybody in the cab concerning the speed of the cab?

We warned the cab driver.

54. Did the taxicab driver reduce his speed when you asked him to?

No.

55. Now, can you describe the conduct of the

(Deposition of Earl Brantley.)

driver as he drove the taxicab immediately prior to the accident?

There were several times he was looking back talking to us, but as far as immediately I couldn't say.

56. Was any conversation had between the cab driver, you and William Shackelford?

Yes.

57. Who started the conversation?

The cab driver.

58. Who carried on the conversation?

The cab driver.

59. What part did you take in the conversation?

We took very little part in the conversation.

60. What part did William Shackelford take in the conversations?

The only part that Shackelford took in the conversation was to tell him "no" to the deals he was making to us.

61. What was the subject of the conversation?

That the cab driver said that he could take us to a dancing hall where we could dance and see girls.

62. How did the driver in the front seat carry on the conversation with you and William Shackelford in the back seat?

He was looking back talking to us.

63. Did he turn around?

(Deposition of Earl Brantley.)

Yes.

64. Did he take his eyes off the road?

Yes.

65. Did this conversation continue until the accident?

Not actually until the accident, but close.

66. At any time prior to the accident, did you see the southbound car which collided with the taxicab?

No.

67. Do you know whether the driver of the taxicab applied his brakes at any time prior to the accident, and if so, how long prior to the accident?

I don't know.

68. Where were you sitting in the taxicab?

Sitting in the back seat, left side.

69. Where was William Shackelford sitting in the taxicab?

In the back seat on the right side.

70. Do you know whether William Shackelford saw the southbound car prior to the accident?

I cannot say for sure, but I believe he did.

71. How do you know?

Because just before he collapsed, I heard him yell.

72. Did William Shackelford do anything or say anything immediately prior to the accident that in-

(Deposition of Earl Brantley.)

dicated to you that he realized the accident was imminent?

The only thing is that he yelled.

73. What did he do or say?

We couldn't understand what he said.

74. Were you hurt in the accident?

Yes.

75. How were you taken from the scene of the accident?

On a Navy ambulance.

76. Where were you taken?

I was taken to the Moffett Field dispensary.

77. Was William Shackelford hurt in the accident?

Yes.

78. Do you know where he was taken?

He was taken to Moffett Field dispensary, and right away, taken to the hospital.

Cross-Examination

By Mr. Ramirez:

79. At what time of the morning did you pick up the taxicab?

Around two o'clock.

80. Had you and Shackelford had any drinks at all from 6 o'clock that evening until the time of the accident?

Yes.

(Deposition of Earl Brantley.)

81. What were you drinking?

Beer.

82. Did you, at any time, drink whisky that day?

Early in the afternoon maybe we might have had a couple of drinks.

83. Did you have anything to drink at all in the taxicab?

No.

84. Did you give the driver of the taxicab any drinks at all while you were in the taxicab?

No.

85. Did you stop in that way to have drinks from the time that you took the taxicab until the time of the accident?

No.

86. How was the inside of the taxicab lighted up, if it was lighted up? In other words, were there any lights in the inside of the taxicab while you were a passenger?

The interior lights were on.

87. With reference to the taxicab driver, where was Shackelford sitting?

In the right back seat.

88. That will be behind the taxicab driver or to the other side?

To the extreme right side.

89. As the car was going, were you on the outside lane or in the inside lane?

(Deposition of Earl Brantley.)

I was on the inside.

90. Will you now state where Shackelford was sitting?

On the back seat in the extreme right of the corner.

91. Where were you sitting on this drive before the accident?

I was also sitting on the back seat, to the left of Shackelford.

92. How far from Shackelford were you sitting?

I was sitting just close enough to Shackelford.

93. Did you sit on that side purposely in order to see?

Yes, and I sometimes moved over to the extreme left side.

94. What caused you to move from one position to another?

I wanted to check the speed of the cab.

95. Are you sure of the taxicab speedometer?

Yes.

96. Are you sure that it was working on this drive, and immediately prior to the accident?

Yes.

97. Were you watching anything else besides the driver and the speedometer?

I was watching a lot of things.

(Deposition of Earl Brantley.)

98. Were you watching the road?

A good part of the time, yes.

99. Did you notice headlights of other cars coming in your direction during the ride?

Yes.

100. Immediately before the accident where were you sitting, if you remember?

Down on the left side of the seat.

101. Were you trying to sleep?

No, I wasn't sleeping.

102. Did you see immediately before the accident, any headlights coming toward the car?

I didn't see anything immediately before the accident.

103. Can you give us a reason why you didn't see anything immediately before the accident?

I was looking forward at that time.

104. Did you notice a sudden lighting up in the interior of the cab just immediately before the accident?

No, I didn't.

105. Immediately before the accident, did you notice or did you feel a change in the course of the taxicab in which you were riding? That is, did you feel the taxicab swerve in any direction immediately before the accident?

Yes.

(Deposition of Earl Brantley.)

106. To what side?

I couldn't say.

107. If you were sitting at times, you stated, on the extreme left of the taxi, did you notice with reference to the road, whether the taxicab driver was driving toward the shoulder or in the right side, or toward the central lane of the road?

He was driving toward its shoulder.

108. Immediately before the accident, about a quarter of a mile before the accident, did you notice whether or not he was keeping at the right of the road?

We were passing a lot of cars.

109. To pass a car in front of him and then return to the outside lane?

Yes.

110. Were you conscious after the impact?

Yes.

111. Will you describe that highway?

Wide, about four lanes.

112. What was it made of, concrete or asphalt?

I believe it was asphalt, but wouldn't be sure.

113. You wouldn't say, however, that there were no headlights flashes on the car immediately before the accident?

No, I couldn't say that.

114. Were you able to observe the two cars after the accident?

(Deposition of Earl Brantley.)

I was too shocked after that.

115. Did you see the car with which your taxicab collided after the accident?

I didn't even see the car, I can remember.

116. And your taxicab?

The best I can remember of the taxicab is that it was turned completely down headed toward San Jose and the car was completely damaged.

117. Did you meet the passengers of the other car at all?

I have never met them.

118. The taxicab driver was very talkative; did you or Shackelford engage in conversation with him?

The only conversation we made was to turn down the propositions he was making us.

119. Why were you out of Moffett Field at the time?

We were on liberty.

120. When was your liberty up?

Until 8 o'clock the next day in the morning.

121. How far is San Jose from Moffett Field where you have to check in?

I don't know the distance; not a long distance, though.

122. Did you know Shackelford pretty well?

Only since June, 1950, when I met him.

(Deposition of Earl Brantley.)

123. During your trip from San Jose until the time of the impact, did you notice anything unusual about anything you have said of the speed of the cab?

The only unusual thing was passing cars and cutting up fast and speed.

124. But, despite that fact, were there any other accidents other than this one?

No.

125. Don't you remember anything after the impact?

Yes. Part of it.

126. What?

Getting out of the car.

127. Do you remember about the respective positions of your cab and the other car or any cars that might have been around?

There was another accident after this one.

That is all I remember.

It was stipulated by Counsel that reading and signing of the deposition is waived because the witness will not be present within this jurisdiction after this date.

Certificate

United States of America,
Canal Zone—ss.

I, John A. Michaelis, a duly commissioned Notary Public in and for the Canal Zone, hereby certify as follows, to wit: That Earl Brantley, a witness for the plaintiff in the within-entitled action, appeared before me on the 11th day of June, 1953, at 2:30 p.m. o'clock, in my office at Balboa, in the Canal Zone, for the purpose of testifying in the above case; that before the taking of his deposition the said Earl Brantley was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the testimony he was about to give in said matter; that questions No. 1 through No. 78, inclusive, hereinabove, were put to the witness on direct examination by Rodrigo Arosemena, present as counsel for the plaintiffs, and questions No. 79 through No. 127, inclusive, hereinabove, were put to the witness on cross-examination by Charles E. Ramirez, present as counsel for the defendants; that the witness, Earl Brantley, answered all said questions; that all of said answers were taken down in shorthand and later typewritten as contained hereinabove; that counsel present for both parties agreed to waive the reading and signing of the within deposition by the witness, Earl Brantley, due to the latter's imminent departure from the Isthmus; that I have read the questions propounded and the answers thereto, as contained herein, and recall them to be as put to the witness and as an-

swered by him; and that I am not a party to or interested in above-entitled action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my commission, at Balboa, in the Canal Zone, on this 16th day of June, 1953.

[Seal] /s/ JOHN A. MICHAELIS.

My commission expires June 3rd, 1955.

United States of America,
Canal Zone—ss.

I, E. C. Lombard, Executive Secretary of the Canal Zone, in charge of the Seal of the Canal Zone Government,

Do Hereby Certify That John A. Michaelis, by and before whom the acknowledgment or proof of the annexed instrument was taken, was, at the time of taking the same, a duly commissioned and sworn Notary Public in and for the Canal Zone, and was duly authorized by the laws of the Canal Zone to take the acknowledgment or proof; further, that I have charge of the official records of the appointment of said Notary Public, that I have a record of his signature, and that I am acquainted with his handwriting and verily believe that the signature to the certificate of acknowledgment or proof of the annexed instrument is his true and genuine signature; further, that the impression of the seal of the said Notary Public as affixed on said cer-

tificate has been compared with the original on file in this office and is verily believed to be true and genuine; and further, that the acknowledgment or proof was taken in accordance with the laws of the Canal Zone.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Canal Zone Government, at Balboa Heights, Canal Zone, this 17th day of June, 1953.

/s/ E. C. LOMBARD.

[Endorsed]: Filed June 22, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause heretofore and on the 2nd day of November, 1953, came on regularly for trial in the above-entitled Court before the Honorable Michael J. Roche, Chief United States District Judge, presiding without a jury, a jury trial having been expressly waived by the parties hereto. Plaintiff Doris Bernice Shackelford appeared in person and by Messrs. Rockwell & Fulkerson and Harold H. Fulkerson, Esq., her attorneys; defendants Mission Taxicab Company, Inc., a corporation, and Robert Goodrick, appeared by Robert Goodrick in person and Messrs. Bronson, Bronson & McKinnon, E. H. Chapman, Esq., of counsel, their attorneys.

Witnesses were called, sworn and examined and evidence, both oral and documentary, was introduced on behalf of plaintiffs and on behalf of defendants and the cause having been closed and the Court having duly considered all the evidence and the same having been submitted to said Court for its decision, the Court, being fully advised in the premises, makes the following

Findings of Fact

I.

The allegations contained in Paragraph I of the Complaint are true.

II.

The allegations contained in Paragraph II of the Complaint are true.

III.

The allegations contained in Paragraph III of the Complaint are true.

IV.

The allegations contained in Paragraph IV of the Complaint are true.

V.

The allegations contained in Paragraph V of the Complaint are true.

VI.

The allegations contained in Paragraph VII of the Complaint are true.

VII.

The allegations contained in Paragraph VIII of the Complaint are true.

VIII.

It is true, as alleged in Paragraph IX of the Complaint, that said Studebaker Sedan automobile was being operated by one Dallas Cutler in a generally southerly direction along and upon U. S. Highway 101 in the County of Santa Clara, State of California, at a point about two miles south of U. S. Naval Air Station, Moffett Field, immediately prior to said accident.

IX.

That the allegations contained in Paragraph X of said Complaint are true.

X.

That at said point U. S. Highway 101 was a four-lane highway containing two northbound lanes east of the center double line; that said northbound lanes were each eleven feet in width and the hard parking shoulder on each side of the highway is twenty feet in width; that said highway at said point was level and straight; that at said time and place the posted speed limit was fifty-five miles per hour; that on the night in question the weather was clear, the moonlight was bright, that on July 29, 1950, the moon rose at 9:11 p.m. and set on the morning of July 30, 1950, at 7:41 a.m., and that the moon had been full at 9:17 p.m. on July 28, 1950; that defendant Robert Goodrick first observed said Studebaker automobile, operated by said Dallas Cutler, when said Studebaker automobile was between eight-five and one hundred feet distant from said taxicab op-

erated by said defendant Robert Goodrick at which time said Studebaker automobile was completely in the most easterly lane of said highway headed due south; that at said time and place the lights of said taxicab were adjusted to the low beam.

XI.

That it is not true, as alleged in Paragraph XI, that on the morning of July 30, 1950, defendants Robert Goodrick and Mission Taxicab Company, Inc., did so, or at all, negligently or carelessly or recklessly operate or managed said taxicab that said taxicab ran into or collided with said Studebaker Sedan operated by said Dallas Cutler at the time and place alleged.

XII.

That it is not true, as alleged in Paragraph XII, that as a direct or proximate or any result of any carelessness or negligence of defendants Mission Taxicab Company, Inc., or Robert Goodrick that said William Thomas Shackelford, deceased, sustained any injuries resulting in his death at the time alleged, or otherwise.

XIII.

That it is not true, as alleged in Paragraph XIII, of the complaint, that as a result of any carelessness or negligence of defendants Mission Taxicab Company, Inc., or Robert Goodrick that plaintiffs have been deprived of financial support or care or maintenance of or by said William Thomas Shackelford, deceased, or have been damaged in the sum of \$120,000.00, or in any sum or amount whatsoever.

XIV.

The Court further finds that on July 30, 1950, at or about the hour of 2:30 a.m., a taxicab operated by defendant Robert Goodrick on behalf of defendant Mission Taxicab Company, Inc., in which William Thomas Shackelford, deceased, was riding as a passenger for hire was being operated by said Robert Goodrick in a generally northerly direction on the easterly side of Bayshore Highway, otherwise known as U. S. Highway 101, in the County of Santa Clara, State of California, at a point about two miles South of U. S. Naval Air Station, Moffett Field, with all due care and caution; that at the same time a Studebaker Sedan automobile was being operated in a southerly direction on said U. S. Highway 101 on the easterly portion thereof in a reckless, careless and negligent manner by one Dallas Cutler; that said Studebaker Sedan automobile so operated by said Dallas Cutler entered said easterly portion of said U. S. Highway 101 within such close proximity to the approaching taxicab operated by said defendant Robert Goodrick that said defendant Robert Goodrick was unable to avoid colliding with said Studebaker Sedan automobile operated by said Dallas Cutler; that the injuries sustained by said William Thomas Shackelford, deceased, and the damages sustained by plaintiffs were wholly and solely, directly and proximately, caused by the recklessness, carelessness and negligence of said Dallas Cutler, as aforesaid.

From the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That said plaintiffs are entitled to take nothing in said cause of action from defendants Mission Taxicab Company, Inc., a corporation, and Robert Goodrick, and that said defendants Mission Taxicab Company, Inc., a corporation, and Robert Goodrick, are entitled to judgment in their favor but without costs.

Let Judgment Be Entered Accordingly.

Dated: This 2nd day of March, 1954.

/s/ MICHAEL J. ROCHE,
Chief United States District
Judge.

Lodged February 25, 1954.

[Endorsed]: Filed March 2, 1954.

In the Southern Division of the United States
District Court, for the Northern District of
California

No. 30732

DORIS BERNICE SHACKELFORD and ALLEN
RAY SHACKELFORD, and LARRY WIL-
LIAM SHACKELFORD, Minors, by DORIS
BERNICE SHACKELFORD, Their Guardian
Ad Litem,

Plaintiffs,

vs.

MISSION TAXI COMPANY, a Corporation,
ROBERT GOODRICK and BUFORD H.
SHIPMAN,

Defendants.

JUDGMENT

The above-entitled cause having heretofore and on the 2nd day of November, 1953, come on regularly for trial in the above-entitled Court before the Honorable Michael J. Roche, Chief United States District Judge, presiding without a jury, a jury trial having been expressly waived by the parties hereto, and plaintiff Doris Bernice Shackelford having appeared in person and by Messrs. Rockwell & Fulkerson and Harold H. Fulkerson, Esq., her attorneys; and defendants Mission Taxicab Company, Inc., a corporation, and Robert Goodrick, appeared by Robert Goodrick in person and Messrs. Bronson, Bronson & McKinnon, E. H. Chapman,

Esq., of counsel, their attorneys, and witnesses having been called, sworn and examined, and evidence, both oral and documentary, having been introduced on behalf of plaintiff and on behalf of defendants and the cause having been closed and the Court having duly considered all of the evidence and the same having been submitted to said Court for its decision, and written Findings of Fact and Conclusions of Law having been heretofore made and filed, which constitute the decision of the Court herein, the Court now orders Judgment in accordance therewith;

Wherefore, It Is Hereby Ordered, Adjudged and Decreed that plaintiffs take nothing from defendants Mission Taxicab Company, Inc., a corporation, and Robert Goodrick, and that judgment be rendered in favor of said defendants but without costs.

Dated: This 2nd day of March, 1954.

/s/ MICHAEL J. ROCHE,
Chief United States District
Judge.

Lodged February 25, 1954.

[Endorsed]: Filed March 2, 1954.

Entered March 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT
OF APPEALS UNDER RULE 73(b)

Notice Is Hereby Given that Doris Bernice Shackelford and Allen Ray Shackelford, and Larry William Shackelford, minors, by Doris Bernice Shackelford, their guardian ad litem, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on March 3, 1954.

/s/ HAROLD H. FULKERSON,
Attorney for Appellants Doris Bernice Shackelford,
Allen Ray Shackelford and Larry William
Shackelford.

[Endorsed]: Filed April 1, 1954.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL

Pursuant to the requirement of Rule 75(d) of the Federal Rules of Civil Procedure, Appellants submit the following Statement of Points on which they intend to rely on this appeal:

I.

The District Court erred in making the Findings of Fact and Conclusions of Law in that such findings and conclusions are not supported by the evidence.

II.

The District Court erred in rendering Judgment for the Defendants and not for the Plaintiffs.

/s/ HAROLD H. FULKERSON,
Attorneys for Appellants.

[Endorsed]: Filed April 14, 1954.

The United States District Court, Northern District
of California, Southern Division

Case No. 30732

Before: Hon. Michael J. Roche,
Judge.

DORIS BERNICE SHACKELFORD, et al.,
Plaintiffs,

vs.

MISSION TAXI COMPANY, et al.,
Defendants.

REPORTER'S TRANSCRIPT

Appearances:

For Plaintiffs:

MESSRS. ROCKWELL &
FULKERSON, by
HAROLD FULKERSON, ESQ.

For Defendants:

MESSRS. BRONSON, BRONSON &
McKINNON, by
EDWIN H. CHAPMAN, ESQ.

Monday, November 2, 1953

Mr. Fulkerson: I will call Mr. DeVries.

FRANCIS K. DeVRIES

called as a witness on behalf of the Plaintiffs and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Court: What is your full name, please?

A. Francis K. DeVries.

Q. Where do you live? A. San Jose.

Q. Your business or occupation?

A. I am a California State Patrolman.

Q. How long have you been so engaged?

A. Eleven years.

The Court: Take the witness.

Direct Examination

By Mr. Fulkerson:

Q. Where are you presently stationed, Mr. DeVries? A. San Jose.

Q. Where were you stationed on July 29 and 30, 1950? A. San Jose.

Q. Is there a highway known as the Bayshore Highway in Santa [2*] A. Yes, sir.

Q. Where is that located?

A. Well, it runs from, generally speaking, San Jose to San Francisco and it runs near Moffett Field. I heard that mentioned, if that's what you mean.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Francis K. DeVries.)

Q. Moffett Field?

A. It is on the route. It is adjacent to the Bayshore Highway.

Q. The Bayshore Highway would lead from San Jose to Moffett Field? A. That's right.

Q. Did you have, in the morning of July 30, 1950, an occasion to investigate an accident that occurred on the Bayshore Highway between San Jose and Moffett Field? A. Yes, I did.

Q. Do you know what time that accident occurred? A. About 2:30 a.m.

Q. Two-thirty in the morning, July 30th?

A. Yes.

Q. What time did you commence to investigate it?

A. The time we were notified of the accident was 2:38 and that's official, 2:38, and then we have more or less guess back about how long it took someone to get to a phone and to call us and so forth: so, roughly, the accident occurred, as near as we can tell, about 2:30. We received the call at 2:38 [3] and we arrived at 2:51.

Q. Now, can you tell us, with reference to Moffett Field, or with reference to any other landmark, where, on the Bayshore Highway between San Jose and Moffett Field, this accident occurred?

A. Well, it happened about a half mile south of Fair Oaks Avenue which is now a part of Sunnyvale, I believe, and that would be roughly a mile and a half—possibly two miles south of the main entrance to Moffett Field.

(Testimony of Francis K. DeVries.)

Q. Can you——

The Court: Would that be on the main highway?

The Witness: That's the main highway.

Q. (By Mr. Fulkerson): Would you describe the appearance and the construction of the highway at that location?

A. Well, it is a real wide, four-lane highway, with about 11-foot lanes, I believe, four of them; wide shoulders of about 20 feet on each side. It is undivided. It is divided only by a dividing line.

Q. And is it straight or curved?

A. Straight.

Q. It is flat or hilly?

A. It is flat; straight and flat.

Q. I have a sketch here for illustrative purposes, Mr. DeVries. Would you take a look at this and tell me if it accurately pictures the Bayshore Highway at the point that you [4] have referred to?

A. Yes, I would say it is a replica of it.

Mr. Fulkerson: If I may, then, I would like to offer this as Plaintiffs' 1.

Mr. Chapman: No objection.

The Court: It may be admitted and marked.

The Clerk: Plaintiffs' Exhibit 1 admitted and filed in evidence.

(Whereupon the sketch referred to above was admitted and filed into evidence as Plaintiffs' Exhibit No. 1.)

Q. (By Mr. Fulkerson): Now, at the time you

(Testimony of Francis K. DeVries.)

arrived at the scene of the accident, Mr. DeVries, what was the condition of visibility?

A. Well, it was night time and it was clear.

Q. Do you know whether or not there was a moon? A. I don't remember.

Q. Was there any rain or fog or anything like that? A. No.

Q. Would you describe what you observed when you arrived at the scene of the accident?

A. Well, there was two vehicles involved. One of them was driven by Cutler, Dallas Cutler and the other one was driven by Goodrick, the taxi.

The car driven by Dallas Cutler, which I have called [5] No. 1 here, Vehicle No. 1, was resting on its side in the north-bound lane or south-bound lane—correction, in the north-bound lanes.

The Court: I suggest that you mark the diagram north and south.

Mr. Fulkerson: This is north (indicating).

Q. (By Mr. Fulkerson): Can you indicate on this blackboard where, with relation to these lanes, you observed the Cutler car?

The Court: Pardon me. There is a pointer down there. Give him the pointer.

The Witness: Well, this happened in 1950 and I don't remember too much about this accident other than what I have written down here and I have written here that Vehicle No. 1 was resting on its side in the north-bound lane, so I believe it was resting, taking up two of the lanes—this is the

(Testimony of Francis K. DeVries.)

north-bound lanes, these two. It would be right in here, in relationship to the road. (Indicating.)

Q. (By Mr. Fulkerson): Would you put one of these little markers here?

Mr. Chapman: I wonder if those lanes could be marked 1 and 2?

Mr. Fulkerson: For the Court's information, may it be pointed out, Mr. Chapman, that up here at the top, we have the Bayshore Highway, U.S. 101, one-half mile south of [6] Fair Oaks Avenue. The scale is one and one-sixteenth inches to one foot, and then in the far left column is the shoulder, 20 feet and S-1 indicates South-1, 11 feet. S-2 indicates South-2, 11 feet. Across the double line, North-2, 11 feet, and North-1, 11 feet, and the shoulder, 20 feet, and you have placed the green car indicator across the North-1 and North-2 line in the two north-bound lanes?

The Witness: That's right.

Q. (By Mr. Fulkerson): Now, can you indicate where, with reference to what you have termed the Cutler car, was the taxicab?

If the record would show that Mr. DeVries has used a green marker to indicate the location of the so-called Cutler car.

Q. (By Mr. Fulkerson): Do your records show an accurate distance, Mr. DeVries?

A. No, this represents approximately 160 feet northward of the other vehicle.

Q. In which direction was the taxicab, which

(Testimony of Francis K. DeVries.)

you have indicated as the red marker? Which direction was it facing?

A. It was facing north-bound.

Q. On the south-bound shoulder?

A. That's correct.

Q. And at a distance of——?

A. Approximately 160 feet. [7]

Q. How did you figure that?

A. Pacing it off.

Q. Did you observe any tire marks at the scene of the accident?

A. Yes, there were swerve marks from the car that's crossways of the north-bound lanes, to where the other vehicle was situated.

In other words, the car—the red car there, as it swerved across the road, left marks on the pavement.

Q. Would you indicate those on this plat with this red chalk? A. (Witness complies.)

Q. Did you observe any skid marks south of the car that you have marked here as the green car?

A. No.

Q. Did you observe any skid marks in the south-bound lane, north of the car?

A. No, we observed no skid marks other than what I have termed as swerve marks between these two places.

Q. You have indicated that this red car, I think you have said, was the taxi? A. Yes, sir.

Q. Did you talk with the driver of the taxi at that time?

(Testimony of Francis K. DeVries.)

A. Yes, but I am not sure whether I talked to him at the scene or at the hospital. I'm sure I talked at the hospital but I'm not positive if I talked to him at the scene. [8]

Q. You are sure you talked to him at the hospital and you think you may have talked to him at the scene? A. That's right.

Q. Did he make any statement to you with regard to how the accident occurred? A. Yes.

Q. What did he say?

A. He stated he suddenly saw two headlights directly before him in his lane, so he tried to swerve to the left and that's all he remembered.

Q. Do you have any recollection of anything else that he said? A. No, I haven't.

Mr. Fulkerson: I have no further questions.

Cross-Examination

By Mr. Chapman:

Q. Officer, do you recall what make of car that green car is you have depicted on the diagram there?

A. The green car was an old model Studebaker sedan; 1929 or 1930 model.

Q. And I think, officer, you said that car was driven by a man named Cutler, is that correct?

A. That's correct.

Q. Did you have any conversation with him at the scene of the accident? [9]

(Testimony of Francis K. DeVries.)

A. Not at the scene. At the Moffett Field dispensary, he was contacted.

Q. When did you see him?

A. Immediately after the accident.

Mr. Chapman: Cutler is not a part to this action, I believe, is he?

Mr. Fulkerson: No, he is not.

Q. (By Mr. Chapman): Officer, you have explained these red lines reading from the green to the red vehicle, as swerve marks. In your opinion, were those swerve marks made by the cab after the collision or were they made by the Studebaker?

A. No, they were made by the cab after the collision.

Mr. Fulkerson: I have some photographs here.

Q. (By Mr. Chapman): Officer, I show you what purports to be a photograph of a taxicab taken at the scene of the accident and will ask you if you can recognize that as a fair reproduction of the appearance of the cab as you saw it after the accident?

A. I imagine that's the car.

Mr. Chapman: May this be admitted as Defendants' first exhibit, your Honor?

Mr. Fulkerson: No objection.

The Court: Let it be admitted and marked.

The Clerk: Defendants' Exhibit A admitted and filed in evidence. [10]

(Whereupon the photograph heretofore referred to was admitted into evidence and marked Defendants' Exhibit A.)

(Testimony of Francis K. DeVries.)

Q. (By Mr. Chapman): Now, officer, I show you another photograph, purported to have been taken at the scene of the accident, purporting to show an overturned automobile in the north-bound lanes, as you have illustrated on the diagram, and I will ask you if you recognize that as the overturned car that you have already illustrated on the diagram?

A. I believe that's the scene, all right.

Mr. Chapman: May this be admitted as defendants' second exhibit?

Mr. Fulkerson: No objection.

The Court: Let it be admitted and marked.

The Clerk: Defendants' Exhibit B admitted and filed in evidence.

(Whereupon photograph above referred to was admitted and filed into evidence as Defendants' Exhibit B.)

Q. (By Mr. Chapman): Officer, I show you another picture depicting the same as Defendants' Exhibit B, a little closer up. I will ask you if you recognize that as the overturned Studebaker at the scene of the accident in the north-bound lane?

A. Yes, sir.

Mr. Chapman: May this be admitted as defendants' third [11] exhibit, your Honor?

Mr. Fulkerson: No objection.

The Court: It may be marked next in order.

The Clerk: Defendants' Exhibit C admitted and filed in evidence.

(Testimony of Francis K. DeVries.)

(Whereupon photograph referred to above was marked Defendants' Exhibit C and admitted and filed into evidence.)

Q. (By Mr. Chapman): Officer, I show you a further photograph purported to have been taken on the spot, the evening of the accident, showing what is evidently a swerve mark from one of the north-bound lanes, across the double center line and will ask you if you recognize that as the beginning of the swerve marks that you have illustrated on the diagram?

A. Yes, sir.

Mr. Chapman: This is offered in evidence, likewise, as Defendants' Exhibit D, your Honor.

The Court: It may be admitted.

The Clerk: Defendants' Exhibit D admitted and filed in evidence.

(Whereupon photograph above referred to was marked Defendants' Exhibit D and admitted and filed into evidence.)

Q. (By Mr. Chapman): Officer, do you have your report with you? May I see it a moment, [12] please?

According to your report, officer, the driver of the other car involved, which is identified as the Studebaker, I believe, was Dallas Cutler, is that correct?

A. That's right.

Q. And he is the one you have designated as Car No. 1 in your report?

A. Yes.

Q. You didn't have any conversation with him

(Testimony of Francis K. DeVries.)

at the scene, but you talked to him later, is that correct? A. That's right.

Q. Officer, is this report and memorandum that accompanies the report made in the usual course of business? A. That's right.

Mr. Chapman: This, if your Honor please, is offered in evidence under the Business Records as Evidence Act.

Mr. Fulkerson: If the Court please, I would object to the offer of the entire exhibit into evidence for the reason that it contains, except for what the officer has already testified to—the only thing it would contain is a hearsay statement that would not be admissible if the officer were to testify to it right now. On that ground, I don't think it is entitled to come into evidence.

The Court: I am not familiar with the contents.

Mr. Chapman: Yes, I understand, of course. Well, it is true, as counsel says, that the report does contain purported [13] interviews of other witnesses, who probably will not be available for this trial. It may be that there is merit to his objection on that particular point.

I might ask the officer this:

Q. (By Mr. Chapman): Did you make any recommendation following the occurrence of this accident and following the inquest that was held? Don't answer until counsel has a chance to object.

Mr. Fulkerson: It is all right with me if he says yes or no. I will object to the next question.

(Testimony of Francis K. DeVries.)

Q. (By Mr. Chapman): Did you make any recommendation as to the disposal of the case?

Mr. Fulkerson: Just a moment. If you will, just answer that yes or no.

The Witness: No.

Q. (By Mr. Chapman): Tell us what recommendation or recommendations you made?

Mr. Fulkerson: Just a moment, please. I will object until I find out the basis upon which he made his recommendations. If I might inquire, did he make his recommendation on the basis of some information received from a witness at the scene who is not a party to this action?

The Court: You may inquire, if you wish.

Mr. Chapman: Take him under voir dire, if you wish.

Q. (By Mr. Fulkerson): Mr. DeVries, you have mentioned that you made a recommendation. I will ask you if the basis of [14] that recommendations was information which you received from a witness to the accident who was not the driver of—who was not a party to this case? A. That's right.

Mr. Fulkerson: On that basis I will object to the question as calling for the conclusion and based upon hearsay.

The Court: I don't get the full import of this recommendation. Recommendation to who or to what?

Mr. Chapman: For further possible action on the part of the parties, your Honor.

Mr. Fulkerson: For a criminal prosecution.

(Testimony of Francis K. DeVries.)

The Court: The objection will have to be sustained.

Mr. Chapman: Very well, your Honor. Thank you for coming, officer. That is all I have.

Mr. Fulkerson: Just a second. I would like to look at those pictures, if I might.

Mr. Chapman: I will return your report, officer.

The Witness: Thank you.

Redirect Examination

By Mr. Fulkerson:

Q. I think you have already testified, Mr. DeVries, that this defendants' Exhibit D, the swerve marks, show right behind where you are standing? A. That's right.

Q. What is this? [15]

A. That's debris from the accident, oil, water, gasoline and so forth.

Q. Is this after or before this car was towed away?

A. I believe that this picture was taken after this car was removed from the highway.

Mr. Fulkerson: Let the record show we have been referring to the Studebaker.

Q. (By Mr. Fulkerson): The picture that is shown in Defendants' D is taken from about the spot where the car, the overturned car, is shown in Defendants' C? A. Yes.

Q. And we also see the swerve marks to which you have referred in Defendants' C?

(Testimony of Francis K. DeVries.)

A. That's right.

Mr. Fulkerson: I think that's all.

Recross-Examination

By Mr. Chapman:

Q. I have one more question, officer, if I may. When you arrived at the scene of the accident, you found debris in various lanes of the highway, did you not? A. Yes.

Q. Did you find debris in both Lanes 1 and 2, north-bound section of the highway?

A. Just a second, please. I have here, "Debris was scattered over the width of the Bayshore." [16]

Q. And the car was overturned at the point indicated on the photograph and also on the diagram, by the green designation?

A. That's right.

Q. In your opinion, was that the point of the impact? A. Yes.

Mr. Chapman: Thank you, officer. That's all I have.

Mr. Fulkerson: I have no further questions.

(Witness excused.) [17]

Monday, November 2, 1953, 2:00 P.M.

Mr. Chapman: May I proceed, your Honor?

The Court: Yes.

Mr. Chapman: Mr. Goodrick, will you come forward, please?

ROBERT JAMES GOODRICK

one of the defendants, called as a witness in his own behalf, being duly sworn, testified as follows:

The Court: What is your full name, please?

The Witness: Robert James Goodrick.

The Court: Where do you reside?

The Witness: 44 Dixmyth, Cincinnati, Ohio.

The Court: Your business or occupation?

The Witness: Insurance salesman.

The Court: Take the witness.

Direct Examination

By Mr. Chapman:

Q. Mr. Goodrick, you are one of the defendants in this case and I understand you have just arrived from Cincinnati to testify in this case, is that correct? A. Yes.

Q. Mr. Goodrick, directing your attention to the month of July, 1950, were you in the employ of the Mission Taxicab Company of San Jose, California, at that time? [2*] A. Yes.

Q. And in what capacity?

A. I was a driver.

Q. How long had you been a taxi driver for the Mission Taxicab Company at that time?

A. About four months.

Q. And for how long had you been operating automobiles before that time?

A. About three months, I believe.

Q. Operating automobiles, not only taxicabs.

A. About six years.

(Testimony of Robert James Goodrick.)

Q. What is your age at this time, Mr. Goodrick?

A. 26.

Q. Now, Mr. Goodrick, directing your attention to the late evening hours or early morning hours of July 30, 1950, did you have occasion to pick up two servicemen in San Jose and drive them to Moffett Field?

A. Yes.

Q. At about what time did you pick these men up?

A. About 2:15.

Q. A.M.?

A. In the morning.

Q. Where did you pick them up?

A. First and Santa Clara in San Jose. [3]

Q. What kind of a cab were you operating?

A. I was driving a Yellow Cab, number 112.

Q. Had you operated that cab before?

A. Yes, sir.

Q. For about how long had you been operating that particular cab?

A. About three months.

Q. Will you tell us whether or not the cab was in good mechanical condition?

A. Yes, it was.

Q. Were the lights, brakes, steering apparatus all right?

A. Yes.

Q. Now, after you picked up these two passengers at First and Santa Clara, what route did you take toward Moffett Field?

A. I came out to Bayshore Highway directly and then up Bayshore Highway.

Q. Before turning onto Bayshore Highway, did you go to First Street?

A. Yes.

Q. Did you have occasion to make any stops other than traffic stops after you once picked these

(Testimony of Robert James Goodrick.)

two servicemen up before you reached the scene of the accident? A. Yes.

Q. Where did you stop? [4]

A. I stopped at Don's Villa.

Q. Where is that located?

A. I don't know the exact address.

Q. Someplace out on First Street?

A. Yes, sir.

Q. What was the occasion of stopping there?

A. There was a man having trouble with two drunks, so I called the office.

Q. You stopped and called the dispatcher?

A. On my radio.

Q. Then did you go back to the car and proceed on your trip? A. Yes, sir.

Q. What route did you take after you got to Bayshore? Straight up Bayshore? A. Yes.

Q. Is it your understanding that Bayshore Highway runs generally north and south? A. Yes.

Q. We have a diagram on the board, Mr. Goodrick, which I previously showed to you. Is that clear to you? A. Yes.

Q. North is at the top and south is at the bottom? A. Yes.

Q. As you turned into Bayshore and proceeded northward, [5] in what lane of travel were you driving? A. In the first lane, going north.

Q. By that do you mean what we call the outside lane? A. Outside lane.

Q. What were the weather conditions that night?

A. Clear and moonlight.

(Testimony of Robert James Goodrick.)

Q. The moon was shining, was it? A. Yes.

Q. Were the pavements dry? A. Yes.

Q. No low fog or anything of that kind?

A. No fog.

Q. As you proceeded north on Bayshore towards the scene of the accident, at approximately what speed did you travel?

A. About 55; not to exceed.

Q. Did you have a speedometer on your cab?

A. Yes, sir.

Q. Was it working? A. Yes.

Q. You have occasion to look at it at all?

A. I don't know.

Q. Were the lights burning on your instrument board?

A. No, there was moonlight on it. I did look at it.

Q. Did you have occasion to pass any of the northbound traffic as you proceeded toward Moffett Field? [6] A. Two or three cars; not many.

Q. What was the condition of traffic generally that night? A. Moderately light.

Q. Now, at any time while driving these two men toward Moffett Field, did either of them protest to you about the speed at which the cab was being operated? A. No.

Q. Did you have any conversation with these men or either of them as you drove towards Moffett Field?

A. A few casual words, but no conversation.

(Testimony of Robert James Goodrick.)

Q. Did you at any time turn your head away from your view of the road and talk to them?

A. No.

Q. Now, as you approached the scene of the accident how far would you say it was from the last car you had passed going north, if you recall?

A. I don't know.

Q. Did you see the other car that was in the collision with you before the accident occurred?

A. I got an impression that it was there; just instantly the lights came on.

Q. You say you got an impression there was an object there and then some lights came on? [7]

A. Yes, it seemed like there was reflection from something. It could have been my lights or the moonlight, I don't know.

Q. Followed by that, you saw some lights go on?

A. Immediately.

Q. How far apart would you say the other vehicle and your cab were when you saw these lights go on? A. About 85 to a hundred feet.

Q. At that time, were you still in the outside lane going north? A. Yes.

Q. And your speed was about what at that time?

A. Not exceeding 55.

Q. Could you tell at that time whether the other vehicle was stopped or moving? A. No.

Q. Tell us what you did, if anything, at that time, when you saw those lights?

A. I tried to swerve to the left to get in lane two, but I couldn't get clear in time.

(Testimony of Robert James Goodrick.)

Q. Was this a collision between the other car and your car? A. Yes.

Q. What parts of the two cars came together?

A. He came in just behind the front bumper and sideswiped [8] me.

Q. Mr. Goodrick, I wish to show you a photograph, which is Defendant's Exhibit A in evidence, and I will ask you if this is a fair reproduction of the appearance of your cab after the collision?

A. Yes.

Q. Of the damage done to it? A. Yes.

Q. Let me ask you this: Were you blacked out at the time of the collision? Were you injured yourself in the collision? A. Yes.

Q. Were you knocked out? A. Yes.

Q. Do you recall anything that happened after the collision? A. No.

Q. Did you ever see this car afterwards?

A. Yes.

Q. Because this picture was taken at the scene of the accident where you saw it there, was that its general appearance? A. Yes.

Q. You say, Mr. Goodrick, that you blacked out or were knocked out at the time of the collision? Where were you when you came to? [9]

A. I came to in the hospital.

Q. You were in the hospital; so that what went on from the time of the collision up to the time you woke up in the hospital, you don't know except what you have been told, is that correct?

A. That's correct.

(Testimony of Robert James Goodrick.)

Mr. Chapman: You may cross-examine.

Cross-Examination

By Mr. Fulkerson:

Q. You said that you didn't have your lights on your instrument panel? A. Yes, I said that.

Q. Were you able then to observe the speed?

A. Yes, it was moonlight.

Q. You mean the moon was sufficiently bright that you could see the instrument panel inside your car?

A. Yes, it had a luminous dial on the arm.

Q. And how frequently did you look at your instrument panel? A. I don't know.

Q. Is that your customary practice, to drive without lights on the instrument panel?

A. Yes, it cuts down the glare.

Q. How bright was this moonlight? Can you give me any idea? How far could you see in the moonlight? [10]

A. I could see silhouettes plainly. If there was anything behind something else, you couldn't see it.

Q. I think you have described the traffic as moderately light, is that correct? A. Yes.

Q. How far would the cars be spaced under that definition?

A. One to a tenth of a mile or greater.

Q. And was the traffic the same in each direction in terms of intensity? Was it just as heavy coming south as it was going north or just as light?

(Testimony of Robert James Goodrick.)

A. Yes.

Q. You would say then that the cars coming south, there would be one every one-tenth of a mile?

A. Approximately.

Q. You have testified that your headlights were in good condition? A. Yes.

Q. How far would they shine?

A. I don't know. I have never tested them.

Q. How do you know they were in good condition? A. I said they were standard.

Q. In other words, in your opinion, their beam was that of the standard car, is that correct?

A. Yes.

Q. How were you driving? With the high or low beam? [11]

A. I was driving with the low beam.

Q. Was that because the moonlight was bright?

A. No, because there was approaching traffic.

Q. Did the occupants of your car make any objection to your stopping at the fight? A. No.

Q. They didn't say anything to you about it?

A. No.

Q. And they never said anything to you about the speed at which you were driving? A. No.

Q. Do you recall having a conversation with the highway patrol officer that investigated the accident?

A. I recall talking to one in the hospital.

Q. Do you recall telling him that you suddenly saw two headlights directly before you in your own lane? A. Yes.

(Testimony of Robert James Goodrick.)

Q. You say now that you felt that you saw the car before you saw the headlights? A. Yes.

Q. Have you always felt that way?

A. It was just an impression but the headlights came on almost as quickly as my mind could register that there was an object there.

Q. Do you remember testifying before the coroner's jury in [12] Alameda on August 11, 1950?

Mr. Chapman: You may read any part of the transcript. It is so stipulated the questions and answers are given as appear in the copy.

Q. (By Mr. Fulkerson): Do you recall giving this testimony? Page 3; I will read the question and answers now. This is by the coroner:

"I have already read the data pertaining to the history of this case. Will you kindly tell the jury just about what happened as you recall on this occasion?

"Answer. Well, I picked the sailor up about 2:15 in downtown San Jose. I started off for Moffett Field with them.

"Question. 2:15 in the morning?

"Answer. 2:15 in the morning, yes—well, a few incidents on the way, but beyond that, as I was approaching—well, it was approximately 2:30 when I was clear in the outside lane on Bayshore Highway, which is a four lane highway, and out of nowhere two headlights just appeared and obviously had been turned on and they couldn't have been turned on in the road or I would have seen them. They were approximately 85 to a hundred feet when

(Testimony of Robert James Goodrick.)

I first noticed them and I tried to pull to the left in the [13] inside lane and then that is where the collision occurred.”

Do you recall making that statement?

A. Yes.

Q. How long had you been in the outside lane, if you can recall, when you saw this car, these two headlights appear in front of you?

A. I don't remember.

Q. You say you don't remember how long since you had passed the last car?

A. That is right. It had been quite awhile.

Q. Now, had you been driving at all times in the far right-hand lane, what we have indicated on this chart as lane north 1? A. Yes.

Q. Ever since you passed the last car, you had been in the outside, north-bound lane, designated as north 1? A. Yes.

Q. And as I understand it, the headlights appeared before you in that lane?

A. That's correct.

Q. And so far as you could determine, they might have been stopped at the time you saw them?

A. Yes.

Q. How far in front of your car could you see?

A. I don't know. [14]

Q. Could you see 500 feet?

A. Not with my lights, no.

Q. Could you see 500 feet with the moonlight?

A. It would depend upon the object.

Q. Could you see a pedestrian at 500 feet?

A. No.

(Testimony of Robert James Goodrick.)

Q. Could you see a car at 500 feet?

A. With no lights, no.

Q. Could you see a car at 300 feet?

A. I don't know.

Q. What is your best estimate of the distance that you could have seen a car?

Mr. Chapman: That is objected to as having been asked and answered. The witness said he didn't know. This merely calls for speculation, I believe, your Honor.

Mr. Fulkerson: I will reframe the question. He stated he doesn't know whether he could have seen 300 feet. He feels he could not have seen 500 feet.

The Court: The night in question?

Mr. Fulkerson: I will reframe the question.

Q. On the night in question, and at the place of the accident, what, in your opinion, was the distance at which you could see an unlighted car ahead of you? A. I don't know.

Q. Are you sure you weren't driving more than 55 miles an [15] hour? A. I am sure.

Q. Why are you so sure you weren't driving more than 55?

Mr. Chapman: That is objected to as being argumentative.

The Court: He may answer if he knows.

The Witness: After you drive a car for a period of time, you feel it, then you know when you are exceeding a speed. If you check your speedometer occasionally, you won't vary more than one or two miles an hour.

(Testimony of Robert James Goodrick.)

Q. (By Mr. Fulkerson): Then, I understand you are basing your testimony that you were driving not over 55 miles an hour on the feeling that you had developed as to the speed of the car and I also assume that you are telling me that you checked occasionally with your speedometer, is that correct? A. Yes.

Q. How frequently did you check your speedometer? A. I don't know.

Q. Would you say once or twice or ten times during the trip? A. I don't know.

Q. Are you sure you checked it? A. Yes.

Q. Where is the speedometer placed in the car that you were driving?

A. Directly in front of me on the dash. [16]

Q. Is it above the steering post? A. Yes.

Q. Directly above the steering post?

A. I don't know that.

Q. Are you sure it isn't to the right of the steering post? A. I don't know exactly.

Q. Is there a hood over the speedometer, a little sun visor? A. I don't know.

Q. There could be, couldn't there?

A. It's possible.

Q. What was the make of this car?

A. '48 Packard.

Q. '48? A. I believe.

Q. Might it be a '46?

A. It could have, I don't know.

Q. What other instruments were on the instrument panel besides the speedometer?

(Testimony of Robert James Goodrick.)

A. Standard equipment; gas, amps, temperature.

Q. Is it your custom occasionally, when you are driving, to look at those to see if the engine is functioning properly? A. Yes. [17]

Q. Did you do that, that night?

A. That night, yes.

Q. You remember doing it?

A. That night.

Q. Did you do it on the trip after you had picked up the two sailors and were taking them to Moffett Field? A. I don't know.

Q. I think you stated you have no idea of the speed of the car that was coming towards you, is that right? A. That's correct.

Q. How far away was the nearest south-bound car at the time you first saw the two headlights appear in front of you?

A. I don't know; not too close.

Q. Would you say that they were more than 500 feet away? A. Yes, I think they were.

Q. Could they be as much as a thousand feet away? A. Yes.

Q. What were you looking at when you were driving? A. At the road.

Q. At all times? A. Yes.

Q. You never took your eyes off the road?

A. No.

Q. You never did? You just told us you looked at the [18] speedometer several times.

A. You speak of the road or functions of the road?

(Testimony of Robert James Goodrick.)

Q. I am talking about the road. I understood you were talking about the road. We want to find out the facts.

A. Then, I would have to correct that statement. No, I wasn't looking at the road all the time, but the function of the road or the automobile, which would be just a split second.

Q. Then, as I understand, the only place that you looked during—let's specify it. I am talking about the time that you were driving along the Bayshore, after you had turned on and left the scene of the fight and, as I understand, from that point on, until the time of the accident, you never took your eyes off the road except for the proper functions of the car, which I understand you to mean, is glancing at the speedometer and glancing at the other instruments on the panel, is that correct?

A. Other than when I turned on Bayshore.

Q. I understand that. I am talking about after you got on Bayshore.

A. Yes.

Q. You never turned around and talked to your passengers in the rear seat?

A. No.

Q. Did you look off to the side? [19]

A. No.

Q. Could you see mountains in the moonlight?

A. I could sense them.

Q. But you didn't look off to see if you could see them?

A. No.

Q. What is on the right side of the Bayshore

(Testimony of Robert James Goodrick.)

Highway, let's say, at the scene of the accident, do you remember?

A. I remember a wide shoulder; that's about all I recall.

Q. You don't remember whether there were trees on the right side or houses or anything else?

A. No.

Q. How do you turn off the lights on the instrument panel in that car?

A. I don't remember.

Q. Had you had the lights on on the instrument panel when you were driving around town?

A. No.

Q. You habitually keep the lights off?

A. Yes.

Q. Do you recall also giving this testimony—this is on page four, Mr. Chapman—before the coroner's jury on August 11, 1950, in Alameda? This was in reply to the following question from a juror:

“Question. Mr. Goodrick, this man approaching, it was head-on? [20]

“Answer. That is correct, sir, yes.

“Question. And then he was in the wrong lane altogether?

“Answer. Yes, he was. He was clear on the wrong side of the highway, as far from the right side of the highway as could be.”

You recall making that statement?

A. Yes.

Q. That is the fact too, I take it?

A. Yes.

(Testimony of Robert James Goodrick.)

Mr. Fulkerson: I have no further questions.

Redirect Examination

By Mr. Chapman:

Q. Just one more question, Mr. Goodrick, I omitted to ask you.

After picking these two servicemen up, did you at any time suggest they go to a dance hall or anything of that kind? A. No.

Q. And one more question I don't think appears in the record.

Do you know what speed Bayshore Highway is sign posted for, if it is sign posted at all?

A. Yes.

Q. What is it, please? [21] A. 55.

Mr. Chapman: Thank you. That is all.

Mr. Fulkerson: No further questions.

May this witness be excused, your Honor? He just arrived by plane and I think we are both through with him.

I have no reason to detain him.

Mr. Chapman: You are excused, Mr. Goodrick. The defendants rest, your Honor.

* * *

[Endorsed]: Filed April 20, 1954. [22]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for appellant:

Complaint.

Order appointing guardian ad litem.

Answer of defendants Mission Taxicab Company, Inc., a corporation, and Robert Goodrick.

Stipulation for taking deposition.

Deposition of Earl Brantley.

Order for entry of judgment.

Findings of fact and conclusions of law.

Judgment.

Notice of entry of judgment.

Notice of appeal.

Cost bond on appeal.

Designation of contents of record on appeal.

Condensed statement in narrative form prepared by plaintiff of all the testimony of all the witnesses.

Statement of points on which appellants intend to rely on appeal.

Appellees' notice to appellant re record on appeal under Rule 75(c).

Stipulation between appellants and appellees as to record on appeal under Rule 75(f).

Deposition of Robert Goodrick's testimony.

Testimony of Francis K. DeVries.

Plaintiffs' exhibits 1 & 2, inclusive.

Defendants' exhibits A to D, inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of May, 1954.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ WM. C. ROBB,
Deputy.

[Endorsed]: No. 14350. United States Court of Appeals for the Ninth Circuit. Doris Bernice Shackelford, Allan Ray Shackelford and Larry William Shackelford, Minors, by Doris Bernice Shackelford, Their Guardian ad Litem, Appellants, vs. Mission Taxicab Company, Inc., a Corporation, Robert Goodrick and Buford H. Shipman, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed May 10, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14350

DORIS BERNICE SHACKELFORD and ALLEN
RAY SHACKELFORD, and LARRY WIL-
LIAM SHACKELFORD, Minors, by DORIS
BERNICE SHACKELFORD, Their Guardian
ad Litem,

Appellants,

vs.

MISSION TAXI COMPANY, a Corporation,
ROBERT GOODRICK and BUFORD H.
SHIPMAN,

Respondents.

STATEMENT OF POINTS AND DESIGNATION
OF RECORD IN ABOVE CASE

Pursuant to the requirements of Rule 17 (6) ap-
pellants hereby adopt the statement of points upon
which appellants intend to rely on appeal and the
designation of record which appears in the type
written transcript of record.

ROCKWELL & FULKERSON,

/s/ HAROLD H. FULKERSON,

Attorneys for Appellants.

[Endorsed]: Filed May 14, 1954.

[Title of Court of Appeals and Cause.]

STIPULATION AS TO PORTION OF RECORD
WHICH IS MATERIAL TO THE CON-
SIDERATION OF THE APPEAL

Pursuant to the provisions of Rule 75(1) of the Rules of Civil Procedure and to the provisions of Rule 17(6) of the Rules of the United States Court of Appeals for the Ninth Circuit it is stipulated by and between the parties hereto, acting through their respective attorneys of record that the following portions of the record are those material to the consideration of the appeal:

1. The Complaint and the Answer.
2. The Findings of Fact and Conclusions of Law.
3. The Judgment.
4. The Notice of Appeal.
5. The testimony of the witnesses F. K. DeVries and Robert Goodrick in question and answer form as contained in the Reporter's transcript, and the testimony of the witness Earl Brantley in question and answer form as contained in the deposition of said witness.
6. All the exhibits introduced by both parties.
7. The following stipulations of the parties as heretofore set forth in the condensed statement in narrative form prepared by plaintiff of all the testimony of all the witnesses and in the stipulation between appellants and appellees as to record on appeal under Rule 75(f):

(a) That none of the testimony of Mrs. Doris Bernice Shackelford was at all material to the issue of negligence on the part of defendants and appellees; that the issue of damages was not determined by the trial court, said court having rendered its decision of no liability on the basis of a finding of no negligence.

(b) That William Thomas Shackelford, deceased, sustained injuries in the collision involving the taxicab in which he was riding as a passenger from which injuries he died.

(c) That there was no further accident involving the taxicab or its occupants, but that there was another later accident involving a truck and another car.

(d) That on the evening of July 29, 1950, within a few miles of the location of the accident the moon rose at 9:11 p.m., Daylight Savings Time and set on the morning of July 30, 1950, at 7:41 a.m., Daylight Savings Time, and that the moon was full on the preceding night, namely, the evening of July 28 at 9:17 p.m., Daylight Savings Time.

/s/ HAROLD H. FULKERSON,
ROCKWELL & FULKERSON,
Attorneys for Appellants.

BRONSON, BRONSON, and
McKINNON,
Attorneys for Respondents.

[Endorsed]: Filed May 26, 1954.